

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning of Video Programming)	CG Docket No. 05-231
)	
Telecommunications for the Deaf and Hard of)	
Hearing, Inc.)	

**COMMENTS OF
NCTA - THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”)¹ hereby submits these comments on the “Petition for Waiver of Registration and Certification Requirement” filed by the Alliance for Community Media (“ACM”) in the above-captioned proceeding. ACM requests a waiver of the captioning requirements of Section 79.1(m) “as it would apply to registration and certification by Public, Education and Governmental (PEG) Access video producers who distribute video programs over PEG or other exempt channels.”² NCTA supports ACM insofar as its Petition relates to PEG channels. In ruling on the waiver petition, the Consumer and Governmental Affairs Bureau should also make clear that video program owners of individual programs included in linear program networks distributed by MVPDs need not register or certify compliance with the captioning rules.

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$245 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to approximately 30 million customers.

² ACM Petition for Waiver of Registration and Certification Requirement at 1, CG Dkt. No. 05-231 (filed Aug. 26, 2016) (“Waiver Petition”).

DISCUSSION

ACM expresses concern about the potential applicability of the requirement to certify compliance with the captioning rules and to provide contact information in an FCC database to a host of entities never covered by the captioning rules. Its concern stems from the potential breadth of the definition of “video program owners” (“VPOs”) in this context.³ The *Second Report and Order* states that “for purposes of the Commission’s television closed captioning requirements, we conclude that the term video programmers includes all VPOs.”⁴ And because the *Second Report and Order* requires “each video programmer” to “submit a certification to the Commission”⁵ stating that the “video programmer” provides captioning for its programs in compliance with the rules or is exempt, the Petition seeks a waiver of this requirement for producers of PEG programming. ACM asks the Bureau to determine that “Public Access producers are exempt from registration and certification as long as they distribute their programs on exempt PEG channels.”⁶

We agree with ACM that any requirement for individual producers of programs aired on channels to register and certify with the Commission would impose significant and unnecessary burdens on those producers.⁷ If ACM’s expansive reading of the *Order* is correct, however, this

³ Letter from Mike Wassenaar, President & CEO, Alliance for Community Media, to Marlene H. Dortch, Secretary, FCC, CG Dkt. No. 05-231, at 1 (filed Mar. 28, 2016) (“ACM Letter”). A “*video program owner*” means “Any person or entity that either: (1) Licenses video programming to a video programming distributor or provider that is intended for distribution to residential households; or (ii) [a]cts as the video programming distributor or provider and also possesses the right to license linear video programming to a video programming distributor or provider that is intended for distribution to residential households.” 47 C.F.R. § 79.1(a)(12). A “*video programmer*” is defined as “Any entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming.” *Id.*, §79.1(a)(9).

⁴ *In re Closed Captioning of Video Programming Telecommunications for the Deaf and Hard of Hearing, Inc.*, Second Report and Order, 31 FCC Rcd. 1469, ¶ 12 (2016) (“*Second Report and Order*”).

⁵ 47 C.F.R. § 79.1(m).

⁶ ACM Letter at 2.

⁷ *Id.*

burden would not just fall on PEG program producers; producers of every program licensed for distribution would conceivably be covered, whether the programs are aired on an access channel exempt from the captioning rules or on any other channel. The Bureau should clarify that, to the extent there is any ambiguity about the reach of its *Second Report and Order*, it did not intend to impose such an unnecessary and burdensome obligation.

The broad definition of “video programming owner” cited by ACM was not meant to require a program-by-program certification or registration for each program licensed to a network for distribution by a cable operator or other multichannel video programming distributor. Rather, it was intended to address a potential gap in captioning responsibility in cases where owners of video programming “may distribute programming themselves and possess a right to license the programming to third parties”⁸ No such gap arises where a network itself certifies its compliance with the captioning rules, in so doing ensuring that each of the programs comprising its linear channel line-up also is either exempt or captioned in accordance with the rules. To interpret the new rules to require *in addition* certifications from each program licensed for airing on that network would impose needless paperwork obligations on the numerous program suppliers that contribute to the thousands of hours of programming shown daily on hundreds of non-broadcast networks.

Moreover, interpreting the rules to impose a program-by-program certification obligation would represent a significant and unexplained departure from the prior captioning certification regime. Under the old rules, cable operators could rely on certifications from program networks – not from individual program owners – to demonstrate compliance.⁹ In rejecting the proposal of

⁸ *Second Report and Order* ¶ 12.

⁹ See 47 C.F.R. § 79.1(j)(1) (requiring VPDs to exercise best efforts to obtain a certification from each video programmer regarding caption quality) (2015 ed.); see also FCC, Public Notice, *Filing Procedures for Reporting*

NCTA and others to eliminate the need to file certifications in light of the new allocation of responsibilities, the Commission explained that “because many video programmers already provide certifications to VPDs under sections 79.1(g)(6) and (j)(1), combining these certifications into a single certification to be filed with the Commission *should not result in any significant additional burden.*”¹⁰ Thus, there is no evidence that the Commission intended to impose any broad new certification requirement by virtue of the changes adopted in allocating responsibility to program networks.

Furthermore, under the new rules, cable operators and other MVPDs remain primarily responsible for the provision of closed captioning on the programming they distribute.¹¹ In carrying out that responsibility, cable operators may rely on certifications filed with the Commission by video programmers.¹² If the rules were interpreted to mean operators must ensure that the producer of each licensed program on the hundreds of networks that cable operators carry every day must have filed its own certifications, operators and other MVPDs would have no realistic way to protect themselves against liability. That surely was not the intent of the Commission in modifying the responsibility rules.

Non-Certifying Video Programmers Under the Closed Captioning Rules, 30 FCC Rcd 4568, n.12 (rel. May 5, 2015).

¹⁰ *Second Report and Order* ¶ 40 (emphasis added) (internal quotations omitted). The *Second Report and Order* also suggests that whatever new burdens were imposed would be minimized by the need to only file annually. Annual filings would not lessen the burdens if the intent was to require individual program suppliers to file, who may or may not be carried in a line-up for the entire year. And the Commission further explained that the rules would “require video programmers to specify only the categories of exemptions that are claimed and do not require that specific details, such as the names of each affected show and timeslots that apply to such show, be listed.” *Id.* ¶ 36 n.141. This is further evidence that the *Second Report and Order* contemplated that a program network, rather than individual program suppliers to that network, would be filing a captioning certification.

¹¹ *Id.* ¶ 28.

¹² *Id.* ¶ 42.

CONCLUSION

For all these reasons, any waiver granted to ACM should make clear that no program-by-program certification or registration is required by the revised captioning responsibility rules.

Alternatively, any such requirement should be waived in the case of non-broadcast networks that themselves certify compliance with the rules.

Respectfully submitted,

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